

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 455 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

KISHORBHAI DEVILAL MARWADI

Versus

STATE OF GUJARAT

Appearance:

MR MAHENDRA TRIVEDI for Petitioner

MS HB PUNANI APP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 29/04/2005

ORAL JUDGEMENT

1. By way of filing this Special Criminal Application, the petitioner has challenged the order passed by the Deputy Police Commissioner, Zone-III,

Ahmedabad City, on 30.11.2004, externing the petitioner for the period of two years from the area of Ahmedabad City and adjoining Districts of Ahmedabad (Rural), Gandhinagar, Kheda and Mehsana, in exercise of powers conferred upon him, under Section 56 of the Bombay Police Act, 1951. The petitioner preferred statutory Appeal under Section 60 of the Bombay Police Act, 1961, and vide order dated 24.3.05, the Appellate Authority, modified the order of externing authority to the extent that the period of externment was curtailed by one year and remaining Appeal of the petitioner was dismissed. Both orders are challenged in this petition.

2. The fact revealed that a show cause notice dated 10th of November, 2003 was issued against the petitioner by Assistant Police Commissioner, 'A' Division, Ahmedabad City, under Section 59 of the Bombay Police Act. It was alleged that the petitioner was ferocious and dangerous person, and was indulged in anti-social and illegal activities. It was alleged that the petitioner executed his illegal activities from March 2001 in the area of City of Ahmedabad within the limits of Shahpur Police Station. It was alleged that on account of terror and fear of the petitioner, none was coming forward to file complaint or depose against the petitioner. It was alleged that the petitioner was a habitual offender and was involved in bootlegging activities of selling illegal liquor. In the said show cause notice two registered offences against the petitioner for the offences punishable under the Indian Penal Code as well as one crime registered under the Prohibition Act was taken into consideration. The petitioner filed reply to the show cause notice on 24th of December, 2003 and tendered defence witnesses. Ultimately, after hearing the petitioner, the Deputy Police Commissioner, passed the order of externment on 30.11.04 relying upon the material placed before him.

3. Learned Advocate Mr. Mahendra Trivedi for petitioner and learned APP Ms. Hansa B Punani for the respondents were heard at length.

4. Various grounds though urged to challenge the order of externment and the order of appellate authority, as opposed and controverted by learned APP, it clearly appears that the petition can be examined and disposed of on the sole issue as to whether the order of externment suffers infirmity of non-application of mind by the authority to the relevant material.

5. Though in show cause notice as well as in the

orders passed by the Externing Authority, in-camera statements and registered offences are taken into consideration, in show cause notice, it is alleged along with the other allegations that the petitioner was indulged in bootlegging activities and, therefore, the externing authority relied upon in-camera statements as well as one crime registered against the petitioner for the breach of the Bombay Prohibition Act. In the final order passed, the Externing Authority relied upon the allegations against the petitioner of bootlegging activities and the said prohibition case. It is pertinent to note that the show cause notice under Section 59 of the Bombay Police Act 1951 was issued against the petitioner in exercise of powers under Section-56(b) of the Bombay Police Act, 1951. Meaning thereby that the powers can be exercised when there are reasonable grounds for believing that a given person is engaged or is about to be engaged in the commission of offence involving force and/or violence or an offence punishable under Chapters 12, 16 and 17 of the Indian Penal Code. True it is that, the Externing Authority has taken into consideration the registered crime against the petitioner under the Indian Penal Code, but along with that material, the detaining authority also took into consideration the allegations against the petitioner in respect of bootlegging activities and a crime registered against him under the Bombay prohibition Act, which is clearly outside the scope of Section 56(b) of the Bombay Police Act, 1951, and consequently, it reveals non-application of mind on the part of the Externing Authority.

6. The facts of the case are squarely covered by a decision of a Division Bench of this Court in the matter of ASWIN CHANDULAL JAISHWAL vs.DY. COMMISSIONER OF POLICE, VADODARA CITY, as reported in 1989 (2) GLR 1429. In this respect, the Division Bench of this court observed as under in para-10 :

" If at all the allegations against the petitioner are that he is indulging in bootlegging activities, action can be contemplated only under Sec. 57 of the Bombay Police Act. If the Police could not secure conviction of the petitioner under the Bombay Prohibition Act to enable to take externment proceedings under Sec. 57 of the Bombay Police Act, alternative cannot be sought by taking action under Sec. 56 of the Bombay Police Act. As discussed above, it appears that the activities of the petitioner as a bootlegger are

required to be stopped. Considering the notice, it transpires that the anti-social activity of bootlegging is required to be controlled and the petitioner is sought to be removed from the harm's way for that purpose so that social culture and the social order may not be affected and other persons also may not follow the petitioner in indulging in such business. We have observed that even no material allegation of general nature based on any particular instance and stating the time and place at which such incident had occurred, is stated either in the notice or in the order. For all these reasons, we allow the Special Criminal Application and set aside the externment order. Rule is made absolute."

7. In view of above, the order passed by the Externment authority on 30th of November, 2004 as confirmed with certain modification by the Appellate Authority vide order dated 24th of March, 2005, both deserves to be quashed and set aside.

8. In the result, the petition is allowed. The order passed by the Externment Authority - Deputy Police Commissioner, Zone -III Ahmedabad City, on 30th of November, 2004, directing externment of the petitioner from the area of Ahmedabad City and adjoining Districts of Ahmedabad Rural, Gandhinagar, Kheda and Mehsana , and the order dated 24th of March, 2005, passed by the Appellate Authority, modifying the order of the Externment Authority to the extent that the period of externment was curtailed by one year and remaining Appeal of the petitioner was dismissed, are hereby quashed and set aside. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair